G. Conclusion: The Commission Should Allow Recovery Of The Deferred <u>Reverse Osmosis Pilot Study Costs</u>

It is uncontroverted that the Deferred Reverse Osmosis Pilot Study Costs are reasonable and prudent, and that they benefited customers. They enabled the Company to select the most cost-effective nitrate removal technology for its Streator customers.

As part of this process, the ion-exchange technology was piloted previously. The Commission allowed recovery of that deferred cost. It should allow recovery of the deferred cost of studying Reverse Osmosis subsequently, which enabled the Company to make an informed selection of the permanent treatment technology.

V.

THE COMMISSION SHOULD REJECT STAFF'S CONTESTED CAPITAL STRUCTURE ADJUSTMENTS

The Company and Staff are in agreement, for purposes of this proceeding, on the calculation of Capital Structure, except for two issues. The Company disputes (1) Staff witness Kight's method of calculating the test year balance and interest costs related to its two Bolingbrook debt issues; and (2) the proposed cost rates she has assigned to its two variable rate debt issues.

A. Bolingbrook Debt Issues

For the two Bolingbrook debt issues, Ms. Kight should have used a cost rate of 9.87% for both issues. In addition, she has employed a different methodology in calculating the test year average principal amount outstanding, and related interest expense. The Company is willing to agree with use of her methodology, provided that the correct cost rate is used and the starting point for calculating present value is July 25, 2002, which is the date the Asset Exchange was completed and the first payment was made to the Village of Bolingbrook. IAWC Exhibit R–1.8

is a corrected version of Ms. Kight's calculations. As shown on page 2, the correct test year balance for the Bolingbrook-Fixed issue is $5,227,466, and the correct interest cost is $507,799. For the Bolingbrook-Variable issue, the correct test year balance is $1,027,323, and the correct interest cost is $99,876. These amounts should be substituted on lines 3 and 4, respectively, of Staff Exhibit 6.0, Schedule 6.03 (Revised), a copy of which is IAWC Exhibit R-1.10.

Mr. Ruckman explained why the Company disagrees with Ms. Kight's proposed cost rate for the two Bolingbrook debt issues: "Ms. Kight has not followed the Commission's findings in Docket No. 01-0001 with regard to the appropriate cost rates for these payment obligations. In that Docket, journal entries to record the asset exchange were proposed by the Company and were modified by the Commission to recognize certain adjustments proposed by Staff witnesses. Findings 6 through 9 of the Order outlined the changes found appropriate by the Commission to the Company's proposed journal entries. IAWC Exhibit R–1.9, is copy of the journal entry proposed by the Company, with adjustments incorporated to reflect the Commission's findings. As indicated, a cost rate of 9.87% was used in the determination of the acquisition adjustment of $7,207,852 stated at finding 9 of the Order." (IAWC Ex. R-1.0, p. 18.)

The Company used the 9.87% rate because it was the authorized rate of return approved by the Commission at the time of the Asset Exchange. It is the rate which most accurately reflects an appropriate rate of return on investment available to the Company.

Mr. Ruckman explained that the "Commission has approved use of the authorized rate of return on investment as the appropriate financing rate in a number of Illinois-American proceedings. For example, in Docket No. 99-0068, the Commission approved use of the authorized rate of return for variances from Part 600.370 to finance customer surcharge payments in lieu of lump sum payment of customer contributions. In certificate proceedings identified as Docket Nos. 96-0353, 97-0209, and 97-0276, the Commission approved tariffs that recognized used of the then authorized rate of return on investment as the financing rate for customer surcharge payments. In numerous Illinois-American certificate proceedings in the past

10 years, where an investment was required and the Commission reviewed the appropriate level of Company contribution, when compared with the appropriate level of contribution required by proposed new customers, the overall authorized rate of return was used to measure the reasonableness of the Company's proposed investment." (IAWC Ex. R-1.0, pp. 18-19.)

B. Variable Debt Issue Interest Rates

For the Company's two variable interest rate debt issues, Staff witness Kight proposed to use current historically low spot interest rates of 1.20% for the variable issue whose rate is set weekly and 1.25% for the variable issue whose rate is set every three months.

Mr. Ruckman explained that "these low rates likely will not be maintained over the life of the rates to be established in this proceeding. Ms. Kight is treating these **variable** issues as if they had fixed rates at the current spot rates. This approach disregards the very nature of the variable issues." (IAWC Ex. SR-1.0, pp. 9-10.)

Mr. Ruckman pointed out that "The 5 year raw historical average of variable rate tax-exempt debt issues is 2.98%. The 10 year raw average is 3.10%. The raw average since 1984 is 3.92%. Exhibit R–1.5 is a copy of a compilation by Bank One of this historical data. These are raw numbers for the "market clearing rate." The rate the Company pays prior to issuance fees is the "cash market floating rate." Therefore, it is necessary to add 12 basis points to these averages. Thus, for the Company's situation, the 5 year historical average is 3.10% and the 10 year historical average is 3.22%." (IAWC Ex. R-1.0, p. 20.)

Mr. Ruckman provided an estimate of what the future variable rate may be. "The Bond Market Association (BMA) survey of member firms concludes that "interest rates are expected to increase, especially in the second half of 2003. IAWC Exhibit R–1.16 is a copy of the BMA survey report. Bank One estimates that the 5 year future average will be 3.47%.

"In addition, I requested Bank One to provide the interest rates if the Company were to convert its variable rate debt issues to fixed rate debt issues at this time. The 5-year fixed rate would be in the range 3.74% to 3.94%. These estimates are shown on Exhibit R–1.17." (IAWC Ex. R-1.0, p. 21.)

Mr. Ruckman recommended that the Commission use 3.47% for the variable rate debt. He also pointed out that "in her direct testimony, Staff Ex. 6.0, pp. 25-26, Ms. Kight effectively acknowledged that the present low spot interest rates will not be maintained. She stated that "EIA forecasts the real risk-free rate will average 3.1% during the 2002-2020 period," and "Those forecasts imply a long-term, nominal risk-free rate between 5.5% and 6.3%." (IAWC Ex. SR-1.0, p. 10.

Mr. Ruckman concluded that Staff's use of spot rates is inappropriate "for a projection for the period the new rates will be in effect. This spot rate, given both historic averages as well as future projections, is unrealistically low. As a consequence, the Company will be prejudiced in the future by the risks of the likely increases in interest rates. In the absence of adopting a rate at, or approaching, the 5 year projection, the Company's only real defensive option is to lock in a fixed rate, which will be even higher than the 5 year rate." (IAWC Ex. R-1.0, p. 21.)

On cross-examination, Ms. Kight acknowledged that a forecasted rate of 1.5% should be used for the two variable rate issues, rather than the 1.25% and 1.20% she used, if forecasted rates are to be used. (Tr. 699.)

She also indicated that she would accept updated actual rates. (Tr. 700.) On May 5, 2003, the Company provided a second updated response to Staff Data Request SK 2.07, showing that the spot rates at May 1, 2003 rose to 1.45% for the issue having a weekly rate and 1.35% for the second issue. The same updated information was provided at the May 2, 2003 hearing. (Tr. 700.) The increase to the weekly rate over the rate used by Ms. Kight is 21%; the increase to the quarterly rate is 8%.

VI.

THE COMMISSION SHOULD ALLOW FULL RECOVERY OF INCENTIVE COMPENSATION COSTS

Staff witness Everson proposes to allow recovery of only a portion of the Company's incentive compensation plan expense. (Staff Ex. 12.0, pp. 11-16.) She proposes to disallow that portion which relates to overall Company financial goals. As a result, she would disallow 60% of plan expense.

Company witness Stafford explained that the portion of the plan related to achievement of financial goals directly benefits customers. It helps to assure that customers are served by a company which is committed to providing the most efficient and least cost service possible, consistent with safety and reliability. (IAWC Ex. R-4.0, p. 4.) Mr. Stafford further stated:

"A financially healthy utility is able to attract the capital investments necessary to provide safe and reliable service and to maintain the technological expertise necessary to operate the Company and to comply with increasing water quality standards. A financially healthy utility is necessary to most effectively facilitate least cost service to customers in all areas such as research and development, emergency response, effective planning, management, capital construction, and O&M. A financially healthy utility is very much in the interests of ratepayers and disallowance of any incentive compensation simply because it is tied to achieving this desirable goal would be inappropriate and counterproductive, especially when major elements of incentive compensation are specifically tied to customer service and individual employee development standards." (IAWC Ex. R-4.0, p. 15.)

Ms. Everson's proposal is inconsistent with prior Commission orders approving full recovery of incentive compensation plan expense even though the plan contained financial goals. In *Northern Illinois Gas Company*, Docket No. 95-0219, the Commission allowed recovery of the full cost of a plan, including the portion related to financial goals, noting that the company's financial strength can, in part, be attributed to the plans, "thereby directly benefiting ratepayers." In *Consumers Illinois Water Company*, Docket No. 97-0351, the Commission allowed full recovery of plan expense, even though 60% was determined by financial goals. The Commission referenced ratepayer benefits from achieving the goals of the plan.

Ms. Everson did not assert that the portion of the plan related to financial goals, or the expense, was unreasonable.

The Commission should follow its prior decisions in *Northern Illinois Gas Company* and *Consumers Illinois Water Company* and allow recovery of the full expense of the incentive compensation plan.

VII.

THE COMMISSION SHOULD ALLOW RECOVERY OF CHARITABLE DONATIONS

Staff witness Pugh proposed to disallow all of the Company's donations listed in the Company's 2003 Business Plan under the title "Community Relations." IAWC Ex. R-4.5 is the schedule of these donations. Ms. Pugh made no attempt to examine each donation. She merely proposed to disallow all of them on a wholesale basis, apparently because of the title of the list.

The recoverability in rates of donations is governed by statute, not by titles. Section 9-227 of the Public Utilities Act, 220 ILCS 5/9-227, provides:

"It shall be proper for the Commission to consider as an operating expense, for the purpose of determining whether a rate or other charge or classification is sufficient, donations made by a public utility for the public welfare or for charitable scientific, religious or educational purposes, provided that such donations are reasonable in amount. In determining the reasonableness of such donations, the Commission may not establish, by rule, a presumption that any particular portion of an otherwise reasonable amount may not be considered as an operating expense. The Commission shall be prohibited from disallowing by rule, as an operating expense, any portion of a reasonable donation for public welfare or charitable purposes."

By definition, therefore, a recoverable donation is one made for the public welfare or for the charitable scientific, religious or educational purposes. Ms. Pugh apparently disagrees with the statute. Her position is whether a donation is recoverable depends on the intent of the giver, not the purpose of the donation. (Tr. 531-2; 533.) Therefore, if a contribution is made to the Boy Scouts of America, March of Dimes or United Fund to establish good will, it would not be recoverable. (Tr. 532-3.)

The problem with her approach is that it is contrary to Section 9-227. The other problem is she determines the giver's motivation from the descriptions of the donation, not from asking the giver. (Tr. 534.) In other words, her position is based entirely on her subjective assumptions.

Mr. Stafford testified that the amounts of each donation are reasonable and that the total amount is reasonable. Ms. Pugh did not dispute the reasonableness of any of the donations.

The donations include donations to the Boy Scouts, National Theater for Children, Museums, a University, a symphony, United Way, Special Olympics, March of Dimes, Little League, Boys & Girls Club, etc. As Mr. Stafford testified, these "are donations for the public welfare and for educational purposes. They support various civic activities. The Company financially supports these activities because they contribute to the enhancement, growth and advancement of its service territory and services. The Company's donations are beneficial to its customers." (IAWC Ex. R-4.0, p. 9.) Therefore, recovery of the donations should be allowed.

VIII.

THE COMMISSION SHOULD REJECT STAFF'S PROPOSED METHOD OF ALLOCATING SECURITY COSTS

The Company assigned security costs based on rate base, in accordance with its strategy of protecting all its water assets from threats of terrorism on a consistent basis.

As shown on Staff Ex. 14.0, Schedule 14.1, Staff witness Sant assigned security costs to the district in which they were incurred. Mr. Sant's approach would cause a substantial underrecovery of security costs in the Sterling and Lincoln Districts due to Staff's proposal to limit the amount of a rate increase in a particular district to the original requested level. This adverse impact would result, even though Staff security expert witness Jaehne found the full amount of the security costs to be prudent.

Indeed, on cross-examination, Mr. Sant appears to agree with allocation based on rate base. He said that the cost of security measures is more directly related to the facilities in an area. (Tr. 511.) He also acknowledged that other costs, such as tank painting and corporate headquarters, are not allocated by district. (Tr. 512.)

The Company recommends that the Commission approve allocation of security costs based on water rate base, consistent with the Company's original filing. In the alternative, it recommends that the Commission reallocate any shortfall in security cost recovery in Sterling and Lincoln on a ratable basis to other rate areas.

IX.

THE COMMISSION SHOULD RECOGNIZE THE O'FALLON LETTER OF INTENT

The City of O'Fallon has its own water distribution system, but obtains its water supply from Illinois-American. O'Fallon has intervened in this proceeding. Two of its witnesses, Mr. Rich and Mr. King, presented testimony in support of O'Fallon's proposed wholesale rate.

Mr. Rich also provided evidence that O'Fallon has a competitive alternative to obtaining water from Illinois-American. The City of St. Louis is willing to sell water to O'Fallon. O'Fallon has caused studies to be performed which have determined that it is feasible to construct a pipeline from St. Louis to O'Fallon. The estimated ultimate cost of water to O'Fallon, including transmission, is approximately $1.40-1.85, per 1,000 gallons. O'Fallon has stated that it will obtain water from St. Louis if it cannot obtain accommodation from Illinois-American. In addition, O'Fallon has discussed providing water from its proposed pipeline to other customers of the Company.

In March, 2003 the Company and O'Fallon began discussions with the objective to reaching a solution which would enable O'Fallon to remain a customer of the Company. As a result of those discussions, the Company and O'Fallon entered into a letter of intent dated April 29, 2003 (IAWC Ex. FLR-1.)

The letter of intent is a competitive alternative arrangement. (Tr. 238.) Under the letter of intent, the parties anticipate a 40 year agreement, under which Illinois-American will provide all the City's water supply requirements at an initial rate of $1.69 per 1000 gallons, with annual inflation adjustments.

The competitive alternative arrangement is based upon the Company's review of the direct testimony of O'Fallon witness Dean Rich, the responses of O'Fallon to the Company's data requests and various meetings between representatives of the Company and the City. (Tr. 238.) Based upon the foregoing, the Company concluded that O'Fallon has a viable competitive alternative to obtain its water supply from St. Louis instead of from the Company. (Tr. 239.) Moreover, the City has done extensive planning and study of this competitive alternative. (*Id.*)

The arrangement is beneficial to the City, because it provides rate stability and ability to plan knowing what the rate will be and without the necessity to intervene in future rate cases.

The arrangement is beneficial to the Company because it is able to retain its largest customer and avoids future controversy.

Mr. Ruckman testified that the arrangement's benefits to customers far exceed costs. O'Fallon is the Company's largest and fastest growing customer. (Tr. 240.)

If the reduction in revenue from O'Fallon is spread over the balance of the single tariff pricing group, this amount would add 1 1/2 cents per 1,000 gallons or 9 cents per month for a typical residential customer.

If O'Fallon were to leave the Company's system, the loss of revenue would cause a rate increase to the balance of the single tariff pricing group of 12 1/2 cents per 1,000 gallons, and would increase a typical residential customer bill by 74 cents. (Tr. 242.)

To summarize:

	Retain O'Fallon	Lose O'Fallon
Rate Increase To Other Customers	1 1/2¢/1,000 g.	12 1/2¢/1,000 g.

Mr. Ruckman also pointed out that O'Fallon was soliciting other customers of the Company to connect to O'Fallon's proposed pipeline to St. Louis, which would cause an even greater revenue loss to the Company.

O'Fallon witness Rich also testified in support of the competitive alternative. He presented information regarding O'Fallon's proposed agreement with St. Louis (IAWC Ex. DR-1); capacity of St. Louis to sell water to O'Fallon (IAWC Ex. DR-2); plans, design and cost of the proposed pipeline to St. Louis (IAWC Ex. DR-3); calculation of payback time for the investment in the pipeline (IAWC Ex. DR-4); potential loan to build the pipeline (IAWC Ex. DR-5); efforts to solicit other communities to join the pipeline, including customers of the

Company (IAWC Ex. DR-6); and memorandum from O'Fallon's consultant updating the estimated delivered cost of water from St. Louis to the City (IAWC Ex. DR-7).

Mr. Rich also testified that the City has authorized expenditure of $100,000 for a study, preliminary plan and engineering of the pipeline. (Tr. 718.) The study showed that there were other potential customers for the pipeline and that it was engineering feasible. (Tr. 718.)

Finally, Mr. Rich stated that, in the absence of the competitive arrangement described in the letter of intent, the City Council has determined to obtain an alternative supply. (Tr. 718.) In fact, he stated that, if the Commission does not approve the $1.69 rate set forth in the letter of intent, the City absolutely will pursue purchasing water from St. Louis. (Tr. 725.)

Illinois-American requests that the O'Fallon arrangement be recognized in the cost of service study and rate design approved by the Commission in this case. Specifically, the revenue requirements assigned to O'Fallon, but not fully recovered under the $1.69 rate, should be assigned to the Southern Division, Peoria, Pontiac and Streator rates. The Company notes that the Commission has recognized similar long-term water supply arrangements which the Company has with Fosterburg, Jersey County and MEMJAWA.

The testimony of Mr. King proposing a wholesale rate and other adjustments, as well as the testimony of O'Fallon witness Brooks regarding security, have been rendered moot by the letter of intent. (Tr. 728.) Therefore, while Company witnesses, as well as Staff and IIWC witnesses, have responded to Messrs. King and Brooks in their rebuttal and surrebuttal testimony, this brief will not address their testimony. Should the Commission determine to not recognize the O'Fallon arrangement, set forth in the letter of intent, in revenue requirements and rates approved in this case, then the Company urges that the Commission reject all assertions by Mssrs. King and Brooks. The testimony presented by the Company, Staff and IIWC demonstrates that the assertions by Messrs. King and Brooks are without merit.

X.

THE COMMISSION SHOULD REJECT INTERVENORS' ASSERTIONS

A. The Commission Should Reject Bolingbrook's Proposed Calculation Under The "Rate Base Neutrality Covenant"

Under an Asset Purchase and Exchange Agreement, the Village of Bolingbrook conveyed its water utility assets to Illinois-American in exchange for certain cash payments and the Company's wastewater treatment assets located in the Village.

The Agreement is dated October 8, 1996 and originally was between Citizens Utilities Company of Illinois ("Citizens") and the Village. The Agreement was assigned to Illinois-American when it acquired the water and wastewater assets of Citizens in 2002.

In Docket No. 01-0001, the Commission entered its Order on April 10, 2002 granting the Company a certificate of public convenience and necessity for the resulting additional water service area in the Village, determining the original cost less depreciation as of July 1, 2001 of the water assets to be acquired from the Village and approved accounting entries for the proposed transaction. The asset exchange took place on July 25, 2002.

One of the provisions of the Agreement is Section 5.3, captioned "Rate Base Neutrality Covenant." (A copy is IAWC Ex. R-1.18.) Section 5.3 provides a formula for the maximum addition to the Company's water rate base for the water assets acquired solely as a result of the asset exchange. It further states that any water facility additions subsequent to the exchange will be included in the Company's water rate base as permitted by the Commission.

Company witness Ruckman explained that, "As shown on Illinois-American Exhibit No. 11, Schedule B-2.3, the Company made its calculation of maximum water rate base addition based upon 2002 data because the exchange occurred in 2002. To properly calculate rate base in this proceeding, the Company then updated the calculation for the 2003 test year increases in plant additions and depreciation." (IAWC Exhibit R-1.0, p. 23.)

Bolingbrook's witness proposed that the calculation of maximum rate base, prior to plant additions subsequent to the asset exchange, be made using rate base and customer count data from Citizens' 1994 rate case, Docket No. 94-0481. That data was estimated data for a projected 1995 test year in the Citizens' rate case. In 1995, Citizens' test year water rate base was $28,236,543. In 2002, it was $80,008,141, an increase of almost 200%. Total customers increased from 35,000 to 48,890 at the time of the exchange.

1. On The Face of Section 5.3, Bolingbrook's Calculation Is Erroneous

The language of Section 5.3 is clear that data as of the date of the asset exchange is to be used to make the calculation. It states, "Citizens, therefore, agrees that it will only petition the Illinois Commerce Commission, **in any rate case subsequent to closing**, to add the following maximum amount to its water rate base **as a result of the asset exchange**:" (*Emphasis added.*)

Section 5.3 makes no reference to the Citizens' 1994 rate case data. This proceeding is the first rate case subsequent to the closing. This rate case will determine rate base for the 2003 test year, not for a year seven years ago.

The Commission's Order in Docket No. 01-0001, entered in 2002, established the net original cost of the water assets to be acquired as of July 1, 2001, not 1995. The Order contemplated that these numbers could change with plant additions and depreciation increases, ordering final journal entries to be filed with the Commission within six months **after** closing of the acquisition.

2. Bolingbrook's Position Is Contrary To "Revenue Neutrality"

Mr. Ruckman pointed out that Section 5.3 states that "**after the exchange of assets**" the average water rate base per customer should neither increase or decrease as a result of the exchange, except as stated in Section 5.3. (*Emphasis added.*) In 2002, the average water rate base per customer was $1,643. However, using Citizens' 1995 data, Bolingbrook witness Drey calculated $806.75. Therefore, under Mr. Drey's position, there would be a 50% **decrease** in average rate base per customer as a result of the exchange. This result is contrary to "rate base neutrality."

3. The Commission Should Strike And Disregard Bolingbrook Ex. R-1.1

In his rebuttal testimony, Bolingbrook witness Drey references and attempts to present a letter written in 1996 during negotiations which later resulted in the written Asset Exchange Agreement. At the hearings, Illinois-American moved to strike this portion of Mr. Drey's rebuttal testimony as being a violation of the Parole Evidence Rule. Parole evidence of negotiations should not be considered in interpreting a contract, such as this one, which is complete on its face.

Under the Illinois Supreme Court's "four corners" rule, an agreement, when reduced to writing, speaks for itself and is not to be changed by extrinsic evidence. *Air Safety, Inc. Teachers Realty Corp.*, 185 Ill. 2d 457 (1999). Under the parole evidence rule, extrinsic evidence of prior understanding is not admissible to vary or contradict a fully integrated agreement. Parole evidence can be introduced only if the writing is incomplete or ambiguous. *Eichmengreen v. Rollins, Inc.*, 325 Ill. App. 3d 517 (1st Dist. 2001; *Krautsack v. Anderson*, 329 Ill. App. 3d 666 (1st Dist. 2002).

A contract is not ambiguous simply because the parties disagree on the meaning of its terms. In the absence of an ambiguity, the intention of the parties is to be ascertained by the contract language, not by the construction placed on it by the parties. *Glenview v. Northfield Woods Water and Utility Co.*, 216 Ill. App. 3d 40 (1st Dist. 1991).

Bolingbrook has not offered any evidence that Section 5.3 is ambiguous. The mere fact that it and the Company disagree on how section 5.3 is to be applied does not make it ambiguous. The Company submits that it is very clear.

4. Regardless, The Letter Supports The Company's Calculation

Without waiving its motion, the Company points out that the letter actually demonstrates that Bolingbrook intended the water rate base per customer is to be determined at the time of acquisition. The letter states that Bolingbrook wants to cap water rate base to an amount equivalent to the number of Bolingbrook water customers **acquired by CUCI** multiplied by CUCI's **current** water rate base per customer. The number of customers **acquired** can only be determined at the time of acquisition. To match apples with apples, the **current** water rate base per customer can only be determined at the same time of acquisition. That is the only way that, after the exchange of assets, the average rate base per customer will neither increase nor decrease as a result of the exchange.

5. Under Bolingbrook's Calculation, Plant Additions Must Be Added

While Bolingbrook's witness admitted that, under Section 5.3, subsequent plant additions are to be added to the rate base calculated under the formula, he did not do so.

Mr. Ruckman pointed out that Mr. Drey's calculation, when combined with plant additions through the test year, would be essentially identical to the Company's calculation. (IAWC Ex. SR-1.0, p. 11).

The following example demonstrates Mr. Ruckman's statement:

1. Using data from Citizens' 1994 rate case, Mr. Drey's calculation of average rate base per customer is:

$$\frac{28,236,543}{35,000} = 806.75$$

2. Plant additions to be added, per Section 5.3, are:

$$\frac{34,157,911}{35,000} = 975.94$$

3. Total water rate base per customer per Mr. Drey:

$$806.75 + 975.94 = 1,782.69$$

4. The Company's calculation at 2002 is:

$$\frac{80,008,141}{48,890} = 1,636.49$$

In other words, Mr. Drey's position can not result in any reduction to the Company's calculation.

6. Conclusion: Bolingbrook's Calculation Should Be Rejected

Mr. Drey, in his rebuttal testimony, asserted that the original cost of the water assets acquired by the Company from Bolingbrook cannot exceed the purchase price the Company paid Bolingbrook. Apparently, this was the witness' attempt to totally circumvent Section 5.3, an acknowledgment that his calculation is erroneous in the first place.

Regardless, it is well-established that the original cost of those assets is the cost to the person first devoting the property to public service. The purchase price is irrelevant, as is Mr. Drey's calculation.

B. The Commission Should Reject IIWC's Proposal For A Future Lead-Lag Study

Intervenor Illinois Industrial Water Consumers (IIWC) witness Gorman recommended that the Commission direct the Company to perform a lead-lag study in its next rate case to compute its cash working capital allowance. In her rebuttal testimony, Staff witness Pugh stated that Staff supports Mr. Gorman's recommendation. (Staff Ex. 15.0, p. 6.)

The Company urges that this recommendation be rejected for several reasons:

1. The Commission has approved the use of the formula method by the Company in all its prior rate orders, and in several rate orders of other utilities. For example, the Commission approved the Company's use of the formula method in rate orders entered in Docket Nos. 00-0340, 97-0081/97-0102; 95-0076; and 92-0116. In the order in Docket No. 95-0076, the Commission specifically rejected a proposal by Staff that the Company be required to present a lead-lag study in its next rate case.

2. The Commission has approved the formula method in rate cases of other utilities. In *Inter-State Water Company*, Docket No. 94-0270, the Commission rejected a proposal that the utility should be required to submit a lead-lag study, stating: "The Commission has reaffirmed the use of the one-eighth method repeatedly over the years, as the foregoing discussion demonstrates ... Based on the evidence, the Commission concludes, as it did in Docket No. 89-0050, that the one-eighth formula provides a reasonable estimate of the cash working capital requirement, without the time and expense related to preparing a lead-lag study." Similarly, the Commission has approved use of the formula method by *Consumers Illinois Water Company* in Docket Nos. 00-0337, 00-0338 and 00-0339 Consol., 97-0351, and 95-0641.

In *United Cities Gas Company*, Docket Nos. 90-0008 and 90-0152 Consol., the Commission approved use of the formula method, calling it "a generally accepted method of computing cash working capital."

In *Commonwealth Edison Company*, Docket No. 90-0169, the Commission stated: "Staff asserts that Edison is required to file a lead-lag study when it seeks to recover positive cash working capital requirement. * * * The Commission concludes that a lead-lag study is not always required when a utility seeks to recover a cash working capital allowance. Therefore, Staff's argument is rejected."

3. While the formula method is well-established and certain in its components and methodology, a lead-lag study has the potential for substantial dispute and litigation over its components and how they are to be measured. For example, in *Interstate Power Company*, Docket No. 90-0196, Staff objected to the company's lead-lag study and proposed that the working capital allowance be computed using the formula method. The Commission agreed with Staff.

4. Mr. Stafford stated that "A lead-lag study would add additional rate case expense estimated to be $134,166.69, without demonstrated benefits. As indicated on Exhibit R-4.7, that estimated cost does not include expected litigation costs and certain other computer and office costs, which could substantially increase the overall costs to prepare and litigate a lead-lag study." (IAWC Ex. SR-4.0, p. 2.)

5. Neither Mr. Gorman nor Ms. Pugh has offered any evidence that a lead-lag study would provide an allegedly more precise calculation of the cash working capital allowance. In fact, in this rate case, Staff accepted use of the formula method.

C. The Commission Should Reject All Adjustments Proposed By Mr. Gorman

1. Working Capital – Formula Method

Mr. Gorman proposed to reduce the Company's allowance for cash working capital under the formula method by excluding several cost components. Essentially, he proposed to cherry pick certain expense items that he speculates may lag revenues.

Staff witness Pugh, as well as Company witness Stafford, objected to Mr. Gorman's proposal, except for one item – Savings Sharing. The Company accepts Ms. Pugh's proposal to remove that expense item from the calculation.

None of Mr. Gorman's other proposed adjustments are consistent with, or provided for under, the formula method. Mr. Stafford discussed each of these in his rebuttal testimony, IAWC Ex. R-4.0, p. 18-19:

"1. **Fuel/Purchased Power**

> Mr. Gorman incorrectly asserts that the Company does not pay its bills to utilities faster than the Customer pays its bills. Fuel and purchased power expense is an operating expense which always is included in the base for the formula method. While the Company's lag in paying a power bill might match a lag in the customer paying his or her bill, the Company has a revenue lag beginning the first day of providing service (reading date to reading date) through the day of billing the customer.

"2. **Annual Pension Expense**

> Mr. Gorman asserts that the pension expense is not a monthly cash outlay and, at best, the Company makes quarterly or semi-annual contributions to pension expense. The Company is required to provide sufficient funds to maintain the pension provision at fully funded levels. The amount of such funding, in any

given year, is going to be either higher or lower than the amount of pension expense recorded. In isolation, these costs will result in a cash working capital need in some years directly, and in most years if regulatory lag is also considered, given the increasing cost nature of this expense.

"3. **Steel Structure Maintenance Expense**

All that Mr. Gorman asserts is that it is "problematic" whether these charges are paid prior to receiving revenues from customers. Mr. Gorman apparently is attempting to create a lead-lag study on a "single-issue" basis, which is contrary to the proper application of the formula method. Regardless, steel structure painting, particularly of storage tanks which have to be removed from service for painting, is performed during the periods March 15-June 15 and September 1-November 15 to avoid periods of cold weather and high demand. In either event, payment for all this work will precede full rate recovery, on an annual basis, of the test year component.

"4. * * *

"5. **Debt Interest**

Mr. Gorman suggests that Debt Interest should be deducted, even though it is not an operating cost, and is not recovered in the working capital formula. Mr. Gorman fails to recognize that the Company routinely makes cash payments in advance of recovery in rates. Notable examples include financing capital projects in advance of recovery in rates of the cash outlay and related financing costs, payment in advance of rate recovery for any amortizations, including deferred security rate case costs not included in the formula, and other prepaid costs."

2. Miscellaneous Expense

Mr. Gorman erroneously proposed an adjustment to miscellaneous expense. None of the security costs included in miscellaneous expense by the Company are already included in payroll or other operating expenses. (IAWC Ex. SR-4.0, p. 7.) This proposal should be rejected.

3. Management Fees

Mr. Gorman's proposed reduction to test year management fees should be rejected. He erroneously took his calculation of 2002 management fees and applied a 2.5% escalation factor. The recorded 2002 costs do not reflect a full year of Call Center costs (9 months only) and shared services costs (10 months only). They also do not reflect the customers added with the acquisition of the Citizens Utilities Company of Illinois assets. His comparisons with the year 2000 also are not correct. The year 2000 costs do not reflect increases in customers and cost resulting from the acquisition of the Citizens' assets and United Water-Illinois (Lincoln).

Mr. Stafford explained how Service Company costs are allocated to Illinois-American: "Article II, Section 2.4, of the services agreement approved by the Commission in Docket No. 88-0303 specifies that allocations, other than directly assigned costs, shall be based upon the number of customers served.

"Thus, for example, as Illinois-American's customer base grows, compared with the Service Company's customer base, increased management fees will be allocated to the Company.

" * * *

"Illinois-American's allocable share of management fee costs have increased from 1999 to 2003 due to increased customers, primarily resulting from acquisitions by Illinois-American of the former Northern Illinois Water Corporation, the former United Water-Illinois, and the former Citizens Utilities systems. Illinois-American's allocable share is also affected by changes in Illinois-American's customer levels due to growth or loss of customers, and changes in customer levels for other states, including acquisitions by other System companies and the divestiture of certain properties in the New England region.

"Total American Water Works Service costs have increased due to system acquisitions; conversion of personnel to the Service Company's payroll who perform services on a regional basis (e.g. Belleville office associates performing services on behalf of Iowa-American and American Lake Water Company), who previously were on Illinois-American's payroll; increases in operating costs such as pensions, insurance, and security programs designed to protect the Company's facilities from terrorism threats, implementation of the National Call Center and Shared Services Center, and expanded utilization of the Hershey Data Center as billing and programming support for the ECIS system employed at the National Call Center.

"Illinois-American's 2003 expense is also increased over 2002 due to complete implementation of Shared Services and the National Call Center in 2002 with partial year expense in 2002 and full year expense in 2003. Costs for Shared Services include twelve (12) months of expense in 2003 compared to ten (10) months in 2002. Costs for the Call Center include twelve (12) months of expense in 2003 compared to nine (9) months in 2002." (IAWC Ex. R-4.0, pp. 29-30.)

Mr. Stafford also explained why Mr. Gorman's 2.5% escalation factor is incorrect.

"Mr. Gorman has not taken into account two factors which were communicated to IIWC in the responses of the Company to IIWC's data requests.

"First, in addition to annualizing 2002 actual data for a full 12 months of the call center and shared savings, it is necessary to annualize the addition of the former Citizens Utilities operations and customers. For 2003, these are projected to be 84,875 customers (IAWC Response to IIWC 14). Of the $6,843,171 estimated total management fee for 2003, $1,849,359 is for the former Citizens Utilities operations and customers, on an annual basis. The amount for the balance of the Company is $4,993.812.

"Second, Service Company has provided to Illinois-American the escalation factor for 2003, which it estimates at 6%. Of this total, 2% is related to Information Systems , and is necessary to reflect the shift of certain personnel capitalizing time to the Orcom conversion to other projects that are expensed rather than capitalized, including a concentrated effort to keep conversion of all remaining companies to the Alton Call Center on target. This timely conversion is already reflected in economies of scale benefits from how Alton Call Center costs are allocated to Illinois-American." (IAWC Ex. R-4.0, pp. 30-31.)

Finally, Mr. Gorman's assertion that the Company is double counting on security costs included in management fees is untrue. Any costs included in management fees for security programs are excluded from security costs. (IAWC Ex. SR-4.0, p. 11.)

4. <u>Deferred Costs</u>

In his direct testimony, Mr. Gorman proposed to exclude deferred tank painting expense incurred prior to the test year. On cross-examination, he acknowledged that he has withdrawn his proposal.

Mr. Gorman's other objections to recovery of deferred charges are redundant of Mr. Sant's, and are addressed in the prior portion of this brief discussing Mr. Sant's proposal.

Deferred costs of enhanced security measures after 9/11 never were included, and could not have been included, in the revenue requirements determined in the Company's prior rate case which established the present rates.

As Mr. Ruckman explained, "In *BPI II*, 146 Ill. 2d at 243, the Illinois Supreme Court upheld recovery of deferred charges specifically because they had not been included in revenue requirements determined in a prior rate order. Regardless, Ex. 10.0, Schedule A-2, p. 1, shows that in the test year, the Company's earned return is 2.99%. If Mr. Gorman believes that the Company somehow received excessive earnings that compensated it for security costs not included in rates, he has the obligation to prove his assertion. He has offered no cogent evidence." (IAWC Ex. SR-1.0, p. 7.)

D. The Commission Should Reject IIWC's Proposed Adjustment To Pension Expense

IIWC witness Gorman proposed that the Company recover pension expense calculated on a cash outlay (ERISA) basis rather than on an accrual (FAS 87) basis. He took this position apparently because the Company's accrual exceeded its actual cash payment for 2003.

Mr. Gorman is about 15 years behind the times. The Company implemented the accrual basis under FAS 87 approximately 15 years ago. Simply stated, FAS 87 requires pension expense to be calculated on an accrual basis. In Docket No. 92-0116, and every subsequent rate order, the Commission approved the Company's recovery of pension expense under FAS 87.

In *Inter-State Water Company*, Docket No. 94-0270, the Commission expressed its strong preference for the FAS 87 accrual method:

> "The Commission notes that, in cases decided since the Company's last rate case, Docket No. 91-0176, the Commission has supported adoption of the accrual approach for ratemaking purposes in connection with FAS 106 PBOPs, which are costs that are analogous to pension costs. This approach is supported by the view that current ratepayers benefit from the service of an employee and should be responsible for paying rates that reflect the employee's post-retirement costs, irrespective of when cash payments are ultimately made. As discussed above, **in Illinois American Water Company, Docket No. 92-0116, the Commission determined that FAS 87 pension costs (as well as analogous FAS 106 costs) should be recovered on an accrual basis**. (*Emphasis added.*)

> "The City's proposal would result in lower rates to current customers at the expense of future customers. In Illinois Power Co., Docket No. 91-0147, Order at p. 94 (Feb. 11, 1993), the Commission expressly rejected a proposal of the type made here by the City with respect to recognition of analogous PBOP costs in rates. The Commission found that it was 'inappropriate' to recognize PBOPs on a cash basis, and require the utility to book a regulatory asset which would then have to be recovered from future ratepayers. The Commission expressed a strong preference for the accrual method. [Docket No. 91-0147, Order at p. 94; Resp. Ex. 2 OR, p. 48.]
>
> "The Company has proposed in this proceeding that the Commission approve a transition to the FAS 87 approach, in accordance with the Commission's expressed preference for the accrual approach embodied in FAS 87. [Resp. Ex. 2.OR, p. 49.] In its testimony, the City offered no basis for remaining on the ERISA method basis, other than the fact that the ERISA method would reduce the revenue requirement.
>
> "The Commission further finds that there is no basis upon which it can accept the City's four-year averaging proposal, as there is no indication that FAS 87 costs will vary widely from year to year and no indication that the Company may over or under collect in the absence of averaging. The Company's proposal to move to the FAS 87 accounting method for pension expense is approved."

Mr. Gorman is not a licensed actuary, has never performed calculations of pension costs, has never determined an expense level under FAS 87, and never performed actuarial calculations for pension cost calculations. (IAWC Ex. R-4.0, p. 22; Tr. 370.) Yet, he purported to criticize the Company's calculation under FAS 87.

Company witness Stafford testified that its pension expense was calculated in accordance with the requirements of FAS 87, and that the economic and demographic assumptions were made in accordance with Actuarial Standards of Practice No. 27 and 35. (IAWC Ex. R-4.0, p. 23.) He provided great detail on the valuations, assumptions and estimation methodology. (*Id.*, pp. 23-25.)

In point of fact, the actual pension expense for 2003 is greater than the projected amount proposed by the Company in this rate case by approximately $200,000 (*Id.*, p. 25).

Mr. Stafford also pointed out that Mr. Gorman's allegations that the Company's cost estimate was biased are incorrect. Referring to Mr. Gorman's rebuttal testimony, Mr. Stafford stated:

"At page 16, lines 14 and 15, he is attempting to compare one component of the calculation of trust fund returns (actual 2002 results) with an entirely different component of the calculation of compensation costs (long-term escalator). For both of these components, actual information and long-term escalators were used. For trust fund returns, actual 2002 results were considered in measurement of trust fund balances, and a long term escalator was used to determine expected return on fund assets. Similarly, actual compensation, as of July 2001 for the initial filing and July 2002 for the recalculation discussed in my rebuttal testimony, was used as a starting point prior to application of an escalator.

"At page 16, lines 16-20, he appears to criticize the Company for not using the prescribed actuarial assumption of 9% for 2002, when actual information for that period was known, and actual data supported a much lower return. Beginning at page 16, line 21, Mr. Gorman criticizes use of a compensation rate greater than what was projected for the test year. What Mr. Gorman fails to acknowledge, however, is that the compensation rate used should consider long-term expectations of all salary adjustments, including promotions, over the working life of eligible employees, and not simply be based on a very short term assumption. If Mr. Gorman's approach were applied to return on assets, he would utilize a 0% return on assets over the entire life of the pension plan. That is not only unrealistic, but it would result in a much higher test year pension expense than what the Company has proposed in this proceeding." (IAWC Ex. SR-4.0, pp. 9-10.)

Mr. Gorman also is incorrect in his assertion that the Company did not attempt to estimate a conservative pension expense. "The Company has attempted to provide a realistic estimate of pension expense in this proceeding. The Company could easily have calculated a higher expense by extending out a lower return on asset assumption into 2003, based upon current market conditions, but elected not to do so. In addition, as indicated in response to item number 19 of the fifth set of IIWC Date Requests, the Company indicated that its use of a long term projection of expected return on assets (9%) was the highest accepted return, without having to provide justification to the Securities and Exchange Commission." (*Id*, pp. 10-11.)

E. The Commission Should Reject Adjustments Proposed By CUB

In his direct testimony, Citizens Utilities Board (CUB) witness Morgan proposed adjustments based upon his assertion that Illinois-American's responses to CUB's data requests did not provide sufficient detail. In his rebuttal testimony, Mr. Morgan withdrew all of his proposed adjustments except for two.

1. Chemical Expense

Mr. Morgan's proposed adjustment to chemical expense is moot. The Company provided actual 2003 chemical expense, which was confirmed by Staff and accepted by the Company. Mr. Morgan's adjustment incorrectly calculated chemical expense by applying pricing savings to a starting point based on 2002 chemical prices, rather than test year pricing information. He also failed to consider chemical costs for carbon leases and reverse osmosis. (IAWC Ex. R-4.0, p. 12.)

2. <u>Insurance Other Than Group Insurance</u>

Mr. Morgan does not understand the Company's Retrospective Rate insurance policies. Accordingly, he incorrectly has proposed to exclude test year supplemental premium payments under these policies.

These premium payments are current, test year payments. They are not, as Mr. Morgan asserts, retroactive premium payments for prior years.

Mr. Stafford described how the retrospective insurance program works: "The Company's funding strategy for insurance is typical for a large company. It funds its insurance premium on a retrospective basis, whereby the current year premium is calculated to reflect the Company's current year loss experience. The loss may relate back to an event in a prior policy year, but the loss payment by the insurance company may occur in the current year. Under a Retrospective Rate policy, the Company is able to keep its cash and make premium payments through supplemental billings only as the insurance company needs funds to pay a claim. * * *

"Under the traditional guarantee cost rate policy, the premium is calculated on a prospective basis, based on a conservative general industry rate. The insurance company collects premiums for all future losses up front, whereas under the Retrospective Plan, losses are funded only as they are incurred." (IAWC Ex. R-4.0, pp. 39-40.)

Mr. Stafford stated that "The Retrospective Rated policy is the least cost alternative. The administrative load for an insurance company under a guarantee cost plan is approximately 35%. Under a retrospective premium plan, it ranges from 5 to 10%. Further, from a cash flow basis, the Retrospective Rated policy clearly provides advantages." (IAWC Ex. R-4.0, p. 40.)

Mr. Morgan stated that he does not dispute the cost effectiveness of the Company's program.

In summary, the Company's insurance cost includes supplemental billings for premiums calculated as the insurance company needs funds to pay a claim against the Company. They are current costs to the Company, not past costs.

XI.

THE COMMISSION SHOULD ADOPT STAFF'S RATE DESIGN, WITH CERTAIN CORRECTIONS

A. The Company Generally Agrees With Staff's Cost Of Service Study And Rate Design

The Company generally accepts Staff's cost of service study and related rate design. The Company's exceptions are set forth below.

B. Exceptions To Staff's Cost Of Service Study And Rate Design

1. Allocation Of Security Costs

As explained above (Sec. VIII), Staff should allocate security costs to Districts in accordance with rate base.

2. Standby Service Rates

Staff has proposed no change to the Standby Service rates for the Champaign and Sterling Districts. In response to Company data request CLH-1.3, Staff witness Harden stated that she proposed no change because there were no billing units.

The Company's filing included proposed increases to these Standby Service rates. If they are not increased in this proceeding, they will become seriously outdated. The Company recommends that these Standby Service rates be increased at the same overall level of increase approved for these respective Districts.

3. Chicago Metro – Sewer Rates

Generally, Staff's overall rate design demonstrates that its district-specific rates are designed to produce Staff's calculation of district revenue requirements, except for Chicago Metro – Sewer. Staff's calculation of revenue requirements for Chicago Metro – Sewer increased substantially from Staff's direct case to its rebuttal case. This increase resulted primarily from Staff's reallocation of certain operating expenses as between Chicago Metro – Water and Chicago Metro – Sewer. Nevertheless, in his rebuttal testimony, Staff witness Johnson did not increase his rate design for Chicago Metro – Sewer. Staff should design rates for Chicago Metro – Sewer that recover the total revenue requirement determined in this case, as Staff has done for all other districts.

C. The Commission Should Reject The People/AG Extreme Rate Design

Intervenor People of the State of Illinois/Attorney General (People/AG) witness Rubin proposed a radical rate design that should be rejected out of hand. In essence, he proposed to move all base water rates, except for fire protection rates, for all districts to single-tariff pricing. He would begin by having a common rate structure for all districts.

It appears that Mr. Rubin is unfamiliar with prior Commission orders establishing rate design for Illinois-American and with the Commission's ratemaking policies. He has not visited any of the Company's districts. (Tr. 318.) He has not prepared a cost of service study. His proposal appears to have been developed in the abstract, without regard to the Company's operations and customers and Commission precedent and policy.

He agreed that, in the profession of developing and preparing cost of service studies, there is more than one recognized methodology. (Tr. 319.) Mr. Rubin would eliminate any distinction between the source of water (surface vs. ground water), contrary to prior orders of the Commission. (Tr. 321-2.) He performed no study of the risks to the Company from potential loss of customers as a result of his proposal, deeming such information to be irrelevant. (Tr. 324.)

Although Mr. Rubin's proposal is based upon his assumption that the present rate design of the Company needs "simplification" to be understandable, he admitted that no customer ever told him that the rate structure was too complex to understand. (Tr. 324.)

Company witness Rumer explained why Mr. Rubin's proposal is not appropriate. He used the Pekin District as an example: "Staff and the Commission have declined to include Pekin in the single-tariff pricing group. Thus, its rates as well as rates of certain other Districts continue to be designed on a district-specific revenue requirement and cost of service study. The Pekin District has solely a groundwater source of supply. The single-tariff pricing group has surface water sources of supply or a combination of groundwater and surface water sources of supply. As a result, there is a substantial difference in source of supply and treatment costs in the Pekin District, compared with those in the single-tariff pricing group." (IAWC Ex. R-6.0, p. 8.)

There are similar differences regarding other Districts. "For example, in Chicago Metro, the source of supply for much of the District is purchased Lake Michigan water, with groundwater in the balance of the District. The Champaign District has groundwater sources exclusively. The Lincoln District has groundwater sources." (*Id.*)

Where single tariff pricing is determined to be appropriate, there should be gradual movement to single-tariff pricing and only when the cost of service studies demonstrate that such movement is cost-based. Gradualism is necessary to achieve sensitivity to any impacts in moving to single-tariff pricing. Even Mr. Rubin agrees with gradualism. (Tr. 324-25.)

Mr. Rubin ignores the fact that, in the Commission's prior rate order, the Commission adopted Staff's cost of service study. The present rates are the resulting rate design recommended by Staff.

Mr. Rubin's assertion, therefore, that the current rate structure is unfair to customers, is absurd. Apparently, he is collaterally attacking prior Commission orders.

The fact is that Mr. Rubin's proposal is the unfair rate structure which would adversely impact customers. He proposes to combine disparate districts and to shift costs unique to Chicago Metro to other districts.

Mr. Rubin has not demonstrated sensitivity for the impacts of his proposal. As Mr. Rumer pointed out, in response to Company data request SRJ-1.13, Mr. Rubin "said that he performed no economic impact study of his proposal on the communities served by the Company. In response to Company data request SRJ-1.16, he said he performed no study assessing the risks to the Company from potential loss of customers when he is proposing increases in rates above those proposed by the Company." (Ex. R-6.0, p. 9.)

Mr. Rumer also pointed out that Mr. Rubin's proposal would cause a violation of the Company's agreement with the University of Illinois. (IAWC Ex. SR-6.0, p. 4.)

Staff also recommends that the Commission reject Mr. Rubin's proposal. (Staff Ex. 17.0, pp. 5-11.) The Company agrees with Staff's objections. In addition, IIWC witness Gorman and Lincoln witness Davis also object to Mr. Rubin's proposal.

XII.

CONCLUSION

The Commission should adopt Staff's calculation of revenue requirements with the following adjustments:

- Allow recovery of all Deferred Security Costs

- Allow recovery of Deferred Reverse Osmosis Pilot Study Costs

- Correct Staff's interest rates for the Bolingbrook debt issues and variable rate debt issues

- Allow recovery of all Incentive Compensation Costs

- Allow recovery of Charitable Donations

- Reallocate Security Costs by rate base

- Recognize the O'Fallon competitive alternative rate

The Commission should adopt Staff's rate design, with the changes recommended by Mr. Rumer. The Commission should reject all of Intervenors' assertions and proposals.

Respectfully submitted,

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Appendix A

DOMESTIC PREPAREDNESS
Ashcroft to treat security as environmental issue
By John Heilprin, Associated Press, 3/12/2003

WASHINGTON -- Attorney General John D. Ashcroft said yesterday that he plans to crack down on companies that fail to do all they can to protect against environmentally damaging terrorist attacks on pipelines, storage tanks, transportation networks, and industrial plants. Emphasizing homeland security as an environmental issue, Ashcroft pledged to increase the Justice Department's prosecution of civil cases to make operators of pipelines, fuel storage tanks, chemical plants, and drinking water facilities comply with environmental and safety laws. He said that the campaign would mean going to court to ensure that pipelines do not leak or explode; that hazardous wastes and chemicals are properly stored, treated, and disposed of; that water supplies are protected; and that each facility develops emergency response plans. The Justice Department also will seek criminal penalties when appropriate, Ashcroft said. "These laws do more than just protect the health and safety of our citizens," he told reporters gathered in his office. "Compliance with and enforcement of these laws makes a real difference in our level of national preparedness." Ashcroft said his civil enforcement priorities for the department's Environment and Natural Resources Division also include ensuring that companies breaking environmental laws do not gain an unfair economic advantage over those that are law-abiding. To do that, companies should be forced to pay a premium for any delay in paying penalties, said Ashcroft and Tom Sansonetti, the assistant attorney general who heads the division. During the last months of the Clinton administration and the first year and a half of the Bush administration, the Justice Department secured record cleanup and compliance commitments by enforcing clean air, clean water, and hazardous waste laws, Ashcroft said. In the fiscal year ending last October, about $3.6 billion was collected or promised, according to Justice Department figures. For the prior fiscal year, the amount was $4.3 billion, the highest ever, the department said.

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